

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD CUSTER,

Plaintiff,

v.

UNION PACIFIC RAILROAD, a
corporation,

Defendant.

C06-1738Z

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Defendant's Motion for Summary Judgment, docket no. 16, is DENIED. There are factual issues that preclude summary judgment. Plaintiff need show only the "mere possibility" that a defendant's actions caused his injuries." See Claar v. Burlington Northern Railway Co., 29 F.3d 499, 504 (9th Cir. 1994). Giving every inference in favor of Plaintiff, even without Plaintiff's tendered expert declaration of Gerald Enders, the Plaintiff's submissions in opposition create issues of fact.

(2) The Court has not relied on the declaration of Gerald Enders, docket no. 23, in concluding that there are factual issues which preclude summary judgment. Defendant's request to strike the declaration of Enders, contained in the Defendant's Reply, docket no. 25, is DENIED as MOOT. The Court will consider the issue as to whether Plaintiff may call Gerald Enders as an expert witness in this case at the pretrial conference. The parties are directed to address this issue in motions in limine.

(3) The Clerk is directed to send a copy of this Minute Order to all counsel of record.

1 Filed and entered this 4th day of February, 2008.

2 BRUCE RIFKIN, Clerk

3 s/ Claudia Hawney
4 By _____
5 Claudia Hawney
6 Deputy Clerk
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